IN THE COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2409 OF 2006

Premnagar Sahakari Griha Rachana
Sanstha Maryadit ...Petitioners

vs.

Shri Ashok Naik & Ors. ...Respondents

Mr.Sushil Nimbkar for the Petitioners.

CORAM: S.C.DHARMADHIKARI, J.

DATE ; 23RD FEBRUARY, 2007.

P.C :-

1. This is a second petition by the Co-operative Housing Society, who has repeatedly refused to grant membership rights to the Respondent Nos.1 and 2.

2. The argument in support of this petition, is that, the Divisional Joint Registrar could not have rejected the Revision Application No.548 of 2002 and

confirmed the order dated 23.10.1997 passed by the Deputy Registrar Co-operative Society, Pune in Appeal No. 15 of 1997.

3. It appears from the record that Respondent No.3 is a brother of Shri.Valllabh Shriniwas Joshi, who was member of the Petitioner Society. He was allotted Plot No.23 Unit No.7. On 18.6.1978 Shri Vallabh Shriniwas Joshi preferred an application requesting the Petitioner Society to allot the said plot to his Brother Shri Arvind Shriniwas Joshi i.e. Respondent No.3. Accordingly, an entry was made in the membership register by the Petitioner Society and Respondent No.3 Arvind Shriniwas Joshi was shown as member in place of Shri. Vallabh Shriniwas Joshi.

4. Upon an application made by Respondent No.3 on 17.5.1980, the Petitioner Society entered the names of other family members of Respondent No.3 as associate members.

5. It is contended that Respondent No.3 did not pay the monthly contribution from 1984 for about 10

years and therefore the lease deed which was to be executed by the Petitioner in his favour was not executed by the Society. The Respondent No.3 therefore had no right, title and interest in the property in law.

6. An application was preferred by Respondent No.1 on 16.6.1994 incorporating therein the fact that the Respondent No.3 has no objection to transfer the plot alongwith construction thereon in his favour. This application dated 16.6.1994 was on the record of the Petitioner Society but according to the Society it was not followed up by the First Respondent.

7. On 29.6.1996 the Petitioner Society gave notice of cancellation of membership to Respondent no.3 on the ground that he is not in use of the plot and has failed to pay the society dues. According to the Petitioner Society this notice was served on the Respondent No.3 but he never took any steps to challenge the same.

8. It is in such circumstances, that the Society

on 12.5.1997 returned the application preferred by Respondent Nos.1 and 2 on 14.3.1997 for membership. In Writ Petition itself, in para 2(xii) this is what is stated :-

> "xii The Petitioner Society submits that, on fine morning on 14.3.1997, the Respondent Nos.1 and 2 again preferred an Application seeking membership of the Petitioner Society. The Petitioner Society replied the said Application on 12.5.1997 returning the said Application and informing the Respondent Nos.1 and 2 that, the membership of the Respondent No.3 is terminated and the Petitioner Society is in a need of the said plot for purpose of it's Office, Library, Gymnasium etc and the Petitioner Society were and is ready and willing to pay the consideration thereof. It is pertinent to note that, this fact is totally ignored by the Learned lower Authority. "

9. It is aggrieved by this communication that Respondent Nos.1 and 2 preferred an Appeal under Section 23 of the Maharashtra Co-operative Societies Act before the Deputy Registrar who has allowed the same by his order dated 23.10.1997.

10. The Petitioner Society challenged this order in Revision and by an order passed by this court, this Revision was directed to be re-heard by the

Divisional Joint Registrar.

11. By the order under challenge in this Writ Petition, the Revision Application upon re-hearing has been dismissed.

12. Aggrieved by this dismissal, the Petitioner Society has approached this Court in Writ jurisdiction under Article 227 of the Constitution of India.

13. The submission of the Learned Advocate appearing for the Petitioner, is that the Divisional Joint Registrar ought to have appreciated the fact that the Respondent No.3 had not executed the lease deed and there being no lease in his favour by the Petitioner Society he has no right, title and interest in the plot and consequently he could not have transferred the same to Respondent Nos.1 and 2. It is next contended that the Petitioner Society never accepted the application of Respondent Nos.1 and 2 dated 14.3.1997 and once the application is not accepted, there is no question of a decision thereon

being rendered, much less rejection of the same. Therefore there was no cause for preferring an Appeal to the Deputy Registrar by the aggrieved Respondent Nos.1 and 2.

14. I am unable to accept both the contentions for obvious reasons. The Petitioner Society Advocate brought to my notice the fact that Respondent Nos.1 and 2 has filed a dispute against the Respondent No.3 to which the Petitioner Society is also a party. The dispute is pertaining to the right of the Respondent Nos.1 and 2 to claim the subject plot and reliance is therefore placed on several documents. Thus, the issue of title to the plot may arise in the pending dispute. It is for the Respondent Nos.1 and 2 to prove its case in the dispute. As of now, the Petitioner being a party to the same, I see no prejudice if the application of Respondent Nos.1 and 2 is granted by the Petitioner Society subject to its rights and contentions in the pending dispute so also subject to the outcome of the same.

15. It is not possible to agree with the Learned

Counsel for the Petitioner, that the application for membership has not been rejected/refused. In this behalf, the communication dated 12.5.1997, a copy of which is annexed as Annexure I (running page 20) is eloquent enough. The communication speaks for itself.

16. Upon a perusal thereof, it is not possible to hold that the application has been returned and not rejected or refused. The Divisional Joint Registrar having considered the same has rightly held that the Appeal before the Deputy Registrar was maintainable. The Respondent Nos.1 and 2 have also forwarded the cheques towards the maintenance charges. The Divisional Joint Registrar has observed that the Respondent no.3 has not been expelled by the Petitioner Society. The transfer, in any event, is prior to the alleged expulsion. In such circumstances, the findings and observations of the Divisional Joint Registrar based upon the documents produced before him, cannot be said to be vitiated by any error nor can be termed as perverse so as to call for interference in the writ jurisdiction of this

court under Article 227 of the Constitution of India. The findings and observations would show that the Petitioner society is avoiding to grant membership rights to Respondent Nos.1 and 2 without any justifiable reasons. The Respondent Nos.1 and 2 have complied with the requirements stipulated by the society and the reasons communicated by the Petitioner Society are not found to be legal and valid.

17. In this view of the matter, it is not possible to interfere with the conclusions which have been drawn by the Divisional Joint Registrar after re-hearing the Petitioner Society and Respondent Nos.1 and 2. Petition is summarily dismissed with the above clarification.

sd/-

(S.C.DHARMADHIKARI, J)